

**UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**ALLEN BEASLEY,
Plaintiff**

v.

**EH GUTIERREZ, ET AL.,
Defendants**

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Civil No. CC-10-22

**ORDER DENYING MOTION TO PROCEED *IN FORMA PAUPERIS* AND
DISMISSING ACTION**

Pending before the Court is *pro se* Plaintiff Allen Beasley's motion to proceed *in forma pauperis* (D.E. 2). The United States Magistrate Judge recommends this Court deny Plaintiff's motion and dismiss this case without prejudice. She concludes Plaintiff is barred from bringing this action because he has three "strikes" within the meaning of 28 U.S.C. §1915(g) and has not alleged that he was under imminent danger of serious physical injury at the time he filed either his complaint or motion to proceed *IFP*. See *Banos v. O'Guin*, 144 F.3d 883, 884-85 (5th Cir. 1998). Plaintiff filed no objection.

When no timely objection to the Magistrate Judge's Memorandum and Recommendation is filed, the Court need only satisfy itself that there is no "clear error" on the face of the record in order to accept the Magistrate Judge's recommendation. *Guillory v. PPG Industries, Inc.*, 434 F.3d 303, 308 (5th Cir. 2005) (citing *Douglass v. United Services Auto. Ass'n.*, 79 F.3d 1415, 1420 (5th Cir. 1996)). The Court finds no clear error in the Magistrate Judge's memorandum and adopts her findings and conclusions.

Plaintiff's motion to proceed *in forma pauperis* is DENIED (D.E. 2). Plaintiff's claims are DISMISSED without prejudice. Plaintiff may move to reinstate this case within thirty days on the condition that he pays the \$350.00 filing fee at that time.

ORDERED this 19 day of May, 2010.


HAYDEN HEAD
SENIOR U.S. DISTRICT JUDGE